



GAIL FARBER, Director

July 6, 2010

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

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ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

#31 JULY 6, 2010

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

IN REPLY PLEASE
REFER TO FILE: WM-4

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**TOTAL MAXIMUM DAILY LOAD COORDINATED MONITORING PLAN
FOR SANTA MONICA BAY BEACHES DRY- AND WET-WEATHER BACTERIA
MEMORANDUM OF AGREEMENT BETWEEN THE COUNTY OF
LOS ANGELES AND THE CITY OF LOS ANGELES
(SUPERVISORIAL DISTRICTS 2, 3, AND 4)
(3 VOTES)**

SUBJECT

This action is to enter into a cooperative Memorandum of Agreement between the County of Los Angeles and the City of Los Angeles to provide for the County of Los Angeles' share of the implementation costs for a coordinated monitoring plan required by the Santa Monica Bay Beaches Dry- and Wet-Weather Bacteria Total Maximum Daily Loads. The estimated net County cost of the Memorandum of Agreement is \$146,166 with an optional third year in the amount of \$73,083.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the proposed coordinated monitoring plan project implementing the Total Maximum Daily Loads for the Santa Monica Bay Beaches Dry- and Wet-Weather Bacteria is exempt from the California Environmental Quality Act for the reasons stated in this letter and in the record of the project.
2. Approve the Santa Monica Bay Beaches Dry- and Wet-Weather Bacteria Total Maximum Daily Loads coordinated monitoring plan project and, based on available funding appropriation, authorize the Chief Executive Officer or his designee, on behalf of the County of Los Angeles, to execute a Memorandum of Agreement to become effective on the date of final execution by the City of Los Angeles and the County until June 30, 2012, for a cost not

to exceed \$146,166 with an optional third year at a cost of \$73,083 if determined to be necessary.

3. Authorize the Chief Executive Officer or his designee, on behalf of the County of Los Angeles, to execute any necessary amendments to this Memorandum of Agreement with the City of Los Angeles to share in the costs of implementing the coordinated monitoring plan provided that any amendments, which relate to costs, are budgeted and do not increase the County's annual cost by 10 percent under the respective agreement.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended actions is to find that the continuance of the coordinated monitoring plan (CMP) project implementing the Santa Monica Bay Beaches Dry- and Wet-Weather Bacteria Total Maximum Daily Loads (Santa Monica Bay Bacteria TMDLs) is exempt from the California Environmental Quality Act (CEQA) and authorize the Chief Executive Officer or his designee, on behalf of the County of Los Angeles (County), to enter into the Memorandum of Agreement (MOA – see Enclosure A) with the City of Los Angeles (City).

The California Regional Water Quality Control Board, Los Angeles Region (LARWQCB), previously adopted the Santa Monica Bay Bacteria TMDLs. The TMDLs identify various agencies that are responsible for meeting TMDL requirements, including implementation of, or continued participation in, monitoring programs. The County and the City are identified among these agencies (see Enclosure B).

Pursuant to the TMDL, the City, the County, and the other TMDL-responsible agencies, as listed in Enclosure B, were to implement the CMP. The City will enter into separate cost-sharing MOAs with all of the other TMDL-responsible agencies listed in Enclosure B, for those agencies to pay their share of the costs of these CMPs. Each TMDL-responsible agency's share, including the County's and the City's share of these monitoring programs, is based on the jurisdictional land area within the contributing watershed identified in the TMDLs.

For these TMDLs, the City has agreed to act on behalf of all TMDL-responsible agencies and will be paid a fee of up to 5 percent of the cost of the work performed under each MOA for project management and contract administration.

Implementation of Strategic Plan Goals

The Countywide Strategic Plan directs the provision of Operational Effectiveness (Goal 1) and Community and Municipal Services (Goal 3). This MOA supports the development of cooperative partnerships with local agencies to effectively leverage our resources using a collaborative effort. Also, implementation of this CMP fulfills the requirements under the Santa Monica Bay Bacteria TMDLs in order to assess the beach water quality and will ultimately improve the quality of life for communities.

FISCAL IMPACT/FINANCING

The purpose of the Santa Monica Bay Bacteria TMDLs MOA is to continue an existing monitoring program that was established by agreement in 2004 and to provide for the County's continued payment of its share of the program. The term of the MOA is two years effective on the date of final execution by the City and the County, projected to be in July 2010, with a third year consisting of optional monthly extensions totaling no more than one year at the County's option.

The net County cost for the two-year term of the MOA is \$146,166. Funding for the first year, in the amount of \$73,083, is included in the Department of Public Works' (Public Works) Fiscal Year 2010-11 Proposed General Fund Budget. Funding for the second year, in the amount of \$73,083, will be requested in Public Works' Fiscal Year 2011-12 Proposed Budget. If determined to be necessary, funding at the same annual cost for the optional third year of the MOA will be requested in the Fiscal Year 2012-13 Proposed Budget.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The LARWQCB previously adopted the Santa Monica Bay Bacteria TMDLs. As shown in Enclosure B, these TMDLs identified the County and the City, along with various other agencies, as responsible for meeting the TMDL requirements. Each of these TMDLs further identified the lead agency responsible for coordinating the activities of the TMDL agencies or TMDL jurisdictional group with the LARWQCB.

Pursuant to these TMDLs, the responsible agencies jointly submitted a CMP to the LARWQCB. The LARWQCB subsequently approved this CMP and further directed the responsible agencies to implement the CMP.

The Santa Monica Bay Beaches Wet-Weather Bacteria TMDL has not been incorporated into the National Pollutant Discharge Elimination System (NPDES) Permit. However, the California Water Code Provision related to technical or monitoring reports

enables the County, the City, and the other responsible agencies the ability to respond to requests from the LARWQCB with information that could result in more cost-efficient programs in the long run. It may also avoid the potential that the LARWQCB will seek to enforce this TMDL through orders and violations, which could result in civil penalties.

The LARWQCB incorporated the Santa Monica Bay Beaches Dry-Weather Bacteria TMDL into the NPDES Permit for municipal stormwater and urban runoff discharge within the County of Los Angeles. This incorporation is subject to legal challenge by the County and the Los Angeles County Flood Control District. However, it is likely that the LARWQCB will seek to incorporate the TMDL into the permit again.

In order to implement the CMP approved by the LARWQCB, the responsible agencies are combining their resources through cooperative cost-sharing MOAs. Under the MOA, the City, on behalf of itself; the County, and the other responsible agencies identified pursuant to these TMDLs, will perform the monitoring provided for in the CMP. The City will enter into separate cost-sharing MOAs with all of the TMDL-responsible agencies in order to fully fund this project. Each TMDL-responsible agency's share of these monitoring programs, including the County's and the City's shares, is based on the jurisdictional land area within the contributing watershed identified in the TMDLs.

The County's and the City's staff and their respective counsels have approved this MOA in concept. Upon your Board's delegation of authority, this MOA, in a form substantially similar to Enclosure A, will be subsequently approved as to form by County Counsel prior to execution by the Chief Executive Officer or his designee. The County-executed MOA will be returned to the City for final execution and processing.

ENVIRONMENTAL DOCUMENTATION

The proposed activities are statutorily exempt from CEQA. The proposed MOA, which includes funding for the implementation of the CMP, involves feasibility and planning studies for possible future actions, which have not been approved, adopted, or funded and, therefore, are exempt under Section 15262 of the State CEQA Guidelines. Further, the proposed activities do not include the adoption of a plan that will have a legally binding effect on later activities.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Approval of these actions will benefit the County by sharing in the cost of implementing the monitoring program. There will be no negative impact on current services.

The Honorable Board of Supervisors
July 6, 2010
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CONCLUSION

Please return two adopted copies of this letter each to the Chief Executive Office, Community and Municipal Services Cluster, and the Department of Public Works, Watershed Management Division.

Respectfully submitted,



GAIL FARBER
Director of Public Works



WILLIAM T FUJIOKA
Chief Executive Officer

GF:GH:sw
WTF:BC:DSP:BK

Enclosure (2)

c: Chief Executive Office
County Counsel
Executive Office
Auditor-Controller
✓ City of Los Angeles

ENCLOSURE A

**MEMORANDUM OF AGREEMENT
BETWEEN
CITY OF LOS ANGELES
AND
COUNTY OF LOS ANGELES**

**SANTA MONICA BAY DRY AND WET WEATHER BACTERIA TOTAL MAXIMUM
DAILY LOADS COORDINATED SHORELINE WATER QUALITY MONITORING
PROGRAM**

This Memorandum of Understanding (MOA) is made and entered into by and among the City of Los Angeles and the County of Los Angeles, a political subdivision of the State of California.

WHEREAS, on January 24, 2002, the California Regional Water Quality Control Board, Los Angeles Region ("LARWQCB") adopted Resolution No. 2002-004 ("Resolution 2002-004"), establishing the limit for the Total Maximum Daily Loads for bacteria during dry-weather for Santa Monica Bay Beaches; and

WHEREAS, on December 12, 2002, the LARWQCB adopted Resolution No. 2002-022 ("Resolution 2002-022"), establishing the limit for the Total Maximum Daily Loads for bacteria during wet-weather for Santa Monica Bay Beaches; and

WHEREAS, Resolutions 2002-004 and Resolution 2002-022 are jointly referred to herein as "Bacteria TMDLs"; and

WHEREAS, the Bacteria TMDLs became effective on July 15, 2003, and

WHEREAS, the Bacteria TMDLs address documented bacteriological water quality impairments at forty-four (44) beaches from the Los Angeles/Ventura County line (to the northwest) to Outer Cabrillo Beach (just south of the Palos Verdes Peninsula); and

WHEREAS, the Wet-Weather Bacteria TMDL identifies as responsible agencies and jurisdictions, the County of Los Angeles, Caltrans, City of Los Angeles, Malibu, Calabasas, Santa Monica, El Segundo, Rancho Palos Verdes, Palos Verdes Estates, Redondo Beach, Rolling Hills, Rolling Hills Estates, Manhattan Beach, Hermosa Beach, Culver City, West Hollywood, Beverly Hills, Agoura Hills, Thousand Oaks, Westlake Village, Inglewood, Torrance, and the State of California through its Department of Transportation (Caltrans) (collectively herein referred to as Agencies, or individually as Agency); and

WHEREAS, the Bacteria TMDLs required that a monitoring plan be submitted to LARWQCB for approval; and

WHEREAS, the monitoring plan entitled, "Santa Monica Bay Beaches Bacterial TMDLs' Coordinated Shoreline Monitoring Plan ("Monitoring Plan") was prepared by the Agencies and approved by the LARWQCB on April 28, 2004; and

WHEREAS, City of Los Angeles entered into separate agreements regarding the implementation of the Monitoring Plan with all of the Agencies listed in Exhibit A; and

WHEREAS, On November 9, 2004, the County of Los Angeles and the Los Angeles County Flood Control District entered into an agreement with City of Los Angeles to cooperatively establish a monitoring program that is consistent with the approved Monitoring Plan and consistent with the provisions of the Bacteria TMDLs; and

WHEREAS, On August 18, 2008, County of Los Angeles entered into a subsequent agreement with the City of Los Angeles to continue with the Monitoring Program, and said agreement will expire on June 30, 2010; and

WHEREAS, City of Los Angeles has the expertise and equipment to perform monitoring services consistent with the Monitoring Plan (hereinafter referred to as Monitoring Services); and

WHEREAS, the County of Los Angeles desires to enter into a new agreement to continue the existing Monitoring Services being performed by City of Los Angeles; and

WHEREAS, City of Los Angeles will enter into separate new agreements with all of the Agencies listed in Exhibit A to continue the Monitoring Services; and

WHEREAS, the County of Los Angeles has agreed to provide its share of funding, subject to annual budget approval, to City of Los Angeles for their performance of Monitoring Services on County of Los Angeles's behalf at locations identified in Exhibit A and City of Los Angeles is willing to provide the Monitoring Services and to be reimbursed in accordance with Article IV and Exhibit B of this MOA.

NOW, THEREFORE, in consideration of the mutual benefits and of the promises herein contained, the County of Los Angeles does hereby agree as follows:

MEMORANDUM OF AGREEMENT

ARTICLE I – Purpose of MOA

- 1. Purpose of MOA** – The purpose of this MOA is to memorialize the County of Los Angeles's and City of Los Angeles' willingness to coordinate the payment for and performance of Monitoring Services that are consistent with the provisions of the Monitoring Plan and the Bacteria TMDLs. The County of Los Angeles recognizes and

acknowledges that this MOA and the work being accomplished hereunder are being undertaken on a voluntary basis as to the wet-weather Bacteria TMDL which has not been incorporated into the NPDES permit in the manner required by law to be enforceable.

2. **Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan (Monitoring Plan)** – The Bacteria TMDLs required that a Monitoring Plan be submitted to the LARWQCB for approval by November 12, 2003. The Monitoring Plan was submitted on November 12, 2003 to the LARWQCB by the District, County Departments and other participating agencies. The Monitoring Plan identified all the monitoring locations, the type and frequency of monitoring. The LARWQCB approved the Monitoring Plan on April 28, 2004, the approved Monitoring Plan is available at www.ladpw.org/wmd/NPDES/beachplan.cfm.

ARTICLE II– Responsibilities of City of Los Angeles

1. **Monitoring** – City of Los Angeles will perform all Monitoring Services consistent with the time frames set forth in the Monitoring Plan and Bacteria TMDLs at locations as indicated in Exhibit A on behalf of the County of Los Angeles.
2. **Cost per monitoring location** – City of Los Angeles, in consultation with the Agencies, will establish each Agency's share of cost for the Monitoring Services based on its jurisdictional land area in Exhibit A. The cost allocation percentages among Agencies and the estimated cost for each monitoring location are shown in Exhibit A.
3. **Reports** – City of Los Angeles will submit monitoring reports to the LARWQCB each month and forward a copy to the County of Los Angeles.

ARTICLE III – Responsibilities of the County of Los Angeles

1. **Documentation** – The County of Los Angeles agrees to provide all requested information and documentation to City of Los Angeles that is deemed necessary to perform the Monitoring Services at no cost to City of Los Angeles.
2. **Grant of Access Rights** – During the term of this MOA, the County of Los Angeles grants City of Los Angeles the right of access and entry to all County of Los Angeles accessed storm drains, channels, creeks, beaches, and existing monitoring stations at beaches subject to this MOA (the “Property”) to achieve the purposes of this MOA. However, should City of Los Angeles require access to the Los Angeles County Flood Control District facilities (storm drains, channels, creeks, and existing monitoring stations), City of Los Angeles shall obtain right of access and entry under a Permit from, or a separate agreement with, the Los Angeles County Flood Control District. City of Los Angeles shall indemnify, defend and hold harmless the County of Los Angeles, their Special Districts, elected and appointed officers, employees, and agents, from and against

any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert fees), arising from or connected with the entry onto the Property. This indemnification is in addition to the other indemnities made herein.

ARTICLE IV – Invoice and Payment

1. **Annual Payment** – The County of Los Angeles shall reimburse City of Los Angeles, subject to annual budget authority, their respective share of cost for Monitoring Services as shown in Exhibit B within sixty (60) days of receipt of the invoice from City of Los Angeles. The total annual monitoring costs shown in Exhibit B are estimates that have been agreed upon amongst City of Los Angeles and the Agencies listed in Exhibit A. Upon approval by the County of Los Angeles, City of Los Angeles will adjust the next Annual Payment to reflect the cost of monitoring from the previous year provided the cost does not exceed \$73,083.
2. **Invoice** – City of Los Angeles will invoice the County of Los Angeles for the annual payment in January of each calendar year beginning January 2011 for that fiscal year (July 1 to June 30). The County of Los Angeles shall pay the invoices within sixty (60) days of receipt of the invoice from City of Los Angeles.
3. Notwithstanding Article IV, Section 1 above and the estimated annual cost of monitoring services shown in Exhibit B, the annual monetary cost for the County of Los Angeles associated with this MOA shall not exceed \$73,083, unless first agreed upon by Parties through an amendment to this MOA.

ARTICLE V – Term of MOA

1. This MOA shall become effective upon execution by the County of Los Angeles and the City of Los Angeles. This MOA shall remain and continue in effect until June 30, 2012. During the term of this MOA, a Party may request that the other Party negotiate, in good faith, modifications to the MOA. Grounds for negotiation may include, but are not limited to, the following circumstances:
 - A. There is a material change in the regulatory framework for stormwater and urban runoffs;
 - B. There is a proposed change, either addition or deletion of monitoring locations, tests and frequency of tests.
 - C. There is a material change in the cost of providing monitoring in the approved locations;

- D. There is a material change (in excess of \$73,083) in the cost of monitoring or preparing for monitoring in the approved locations.
2. This MOA shall continue on a month to month basis after the expiration date as stated in Article V, Section 1 above if the County of Los Angeles requests City of Los Angeles in writing that the City of Los Angeles continue Monitoring Services on behalf of the County of Los Angeles or a new MOA is executed for employing City of Los Angeles to perform Monitoring Services on behalf of the County of Los Angeles or County of Los Angeles arranges for Monitoring Services to be provided by another means, but not to exceed twelve (12) months. The cost for monthly Monitoring Services shall be one twelfth of the annual cost of \$73,083.
 3. Either Party may elect to terminate this agreement for any reason in whole or in part upon 30-days written notice to the other party. The terminating Party shall remain responsible for its allocated costs related to work completed under this MOA incurred up to the effective date of termination.
 4. The Annual Payment shall be increased by the Consumer Price Index (CPI) annually only upon mutual consent of both parties and subject to annual funding availability.

ARTICLE VI – General Provisions

1. **Notices** – Any notices, bills, invoices, or reports relating to this MOA, and any request, demand, statement or other communication required or permitted hereunder shall be in writing and shall be delivered to the Representative of the Party at the addresses set forth below. Parties shall promptly notify each other of any change of contact information provided below. Written notice shall include notice delivered via email. A notice shall be deemed to have been received on (a) the date of delivery, if delivered by hand during regular business hours, or by confirmed facsimile or by email; or (b) on the third business day following deposit in the United States mail, postage prepaid to the addresses set forth below:

City of Los Angeles:

Invoice:

City of Los Angeles
Bureau of Sanitation
Public Works Building
1149 S. Broadway, 9th floor
Los Angeles CA 90015
Attention: Financial Management Division
Fax No.: 213-485-4269

Others:

Hyperion Treatment Plant
Bureau of Sanitation
12000 Vista Del Mar
Harry Pregerson Technical Support Facility
Playa Del Rey CA 90293
Attention: Environment Monitoring Division
Fax No.: (310) 648-5731
E-mail address: emd@san.lacity.org

County of Los Angeles:

Invoices -

County of Los Angeles
Department of Public Works
Fiscal Division
P.O. Box 7508
900 S. Fremont Av.
Alhambra, CA 91802
Attention: Fe Jimenez,
Accounts Payable Section
Fax No.: (626) 458-6568
E-mail Address: fjimenez@dpw.lacounty.gov

Other Correspondences -

County of Los Angeles
Department of Public Works
Watershed Management Division
900 S. Fremont Ave.
Alhambra, CA 91802
Attention: Oliver Galang
Data Management Section
Tel No.: (626) 458-4364
Fax No.: (626) 457-1526
E-mail Address: ogalang@dpw.lacounty.gov

2. **Relationship of the Parties** – The Parties are and shall remain at all times as to each other, wholly independent entities. No Party to this MOA shall have power to incur any debt, obligation, or liability on behalf of another Party or otherwise act as an agent of another Party except as expressly provided to the contrary by this MOA.
3. **Cooperation, Further Acts** – Parties shall cooperate fully with one another to attain the purposes of this MOA.

4. **Amendments** – All amendments to this MOA must be in writing and executed by the Parties in the same manner as this MOA.
5. **Indemnification** – To the fullest extent permitted by law, the County of Los Angeles agrees to save, indemnify, defend, and hold harmless the City of Los Angeles and its special districts, officers, employees and agents, and the City of Los Angeles agrees to save, indemnify, defend, and hold harmless the County of Los Angeles and its special districts, officers, employees and agents, from any and all liability, claims, suits, actions, arbitration proceedings, administrative proceedings, and regulatory proceedings, losses, expenses, or any injury or damage of any kind whatsoever, whether actual, alleged or threatened, attorney fees, court costs, and any other costs of any nature without restriction incurred in relation to, as a consequence of, or arising out of, the performance of this Agreement, and attributable to the fault of the other.
6. **Governing Law** – This MOA is governed by, interpreted under and construed and enforced in accordance with the laws of the State of California.
7. **Severability** – If any provision of this MOA shall be determined by any court to be invalid, illegal or unenforceable to any extent, the remainder of this MOA shall not be affected and this MOA shall be construed as if the invalid, illegal or unenforceable provision had never been contained in this MOA.

IN WITNESS WHEREOF, by order of the Board of Supervisors, this Agreement has been executed on behalf of the County of Los Angeles on the day, month, and year indicated on the following page. On behalf of City of Los Angeles, the Board of Public Works executed this Agreement and attested by the City Clerk as of the date specified below.

CITY OF LOS ANGELES

Attest:

June Lagmay
City Clerk

By: _____
Cynthia M. Ruiz, President
Board of Public Works

APPROVED AS TO FORM:

Carmen Trutanich
City Attorney

By: _____
Edward M. Jordan
Assistant City Attorney

COUNTY OF LOS ANGELES

Date: _____

By: _____
William T Fujioka
Chief Executive Officer

APPROVED AS TO FORM:

ANDREA SHERIDAN ORDIN
County Counsel

By: _____
Deputy

**Total Maximum Daily Load Coordinated Monitoring Plans
List of TMDL-Responsible Agencies**

Coordinated Monitoring Plan	Lead Jurisdiction	Jurisdictional Group	Responsible Agencies
Santa Monica Bay Beaches Dry- and Wet-Weather Bacteria TMDLs	County of Los Angeles	Jurisdiction 1	County of Los Angeles
			City of Malibu
			Caltrans
			City of Los Angeles
			Calabasas
	City of Los Angeles	Jurisdiction 2	County of Los Angeles
			El Segundo
			Manhattan Beach
			Culver City
	Santa Monica	Jurisdiction 3	Santa Monica
			City of Los Angeles
			County of Los Angeles
	Malibu	Jurisdiction 4	Malibu
			Caltrans
			County of Los Angeles
	Manhattan Beach	Jurisdiction 5	Manhattan Beach
			El Segundo
			Hermosa Beach
			Redondo Beach
			Caltrans
	Redondo Beach	Jurisdiction 6	Redondo Beach
			Hermosa Beach
			Manhattan Beach
			Torrance
			County of Los Angeles
			Caltrans
	Rancho Palos Verdes	Jurisdiction 7	Rancho Palos Verdes
			City of Los Angeles
			Palos Verdes Estates
			Redondo Beach
			Rolling Hills
			Rolling Hills Estates
			Torrance
			County of Los Angeles
			Caltrans